

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, Linda Breathitt,  
And Nora Mead Brownell.

Green Canyon Pipe Line Company, L.P.

Docket No. PR01-15-001

ORDER ON REHEARING

(Issued January 17, 2002)

On October 11, 2001, the Commission issued a letter order (October 11 Order) addressing Green Canyon Pipe Line Company, L.P.'s (Green Canyon) petition for approval to continue its existing transportation rate for interruptible service performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).<sup>1</sup> Green Canyon filed a request for rehearing regarding the triennial rate filing requirement. For the reasons discussed below, the Commission denies the request for rehearing. This determination ensures that the Commission can continue to meet its obligation to ensure that the rates charged by intrastate pipelines under section 311(a)(2) are fair and equitable.

I. Background

Green Canyon is an intrastate pipeline performing interstate transportation services pursuant to section 311 of the NGPA. The October 11 Order accepted Green Canyon's petition to continue its existing section 311 maximum transportation rate of \$0.294 per MMBtu for interruptible service, subject to condition. The order required Green Canyon to file an application for rate approval under section 284.123(b)(2) of the Commission's regulations to justify its current rate or to establish a new maximum on or before May 21, 2004.<sup>2</sup> On November 9, 2001, Green Canyon filed the subject request for rehearing.

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<sup>1</sup>Green Canyon Pipe Line Company, L.P., 97 FERC ¶ 61,021 (2001).

<sup>2</sup>18 C.F.R. § 284.123(b)(2) (2001).

## II. Green Canyon's Request for Rehearing

Green Canyon requests rehearing of the October 11 Order, claiming that the order erred by imposing a triennial rate re-justification filing requirement that is no longer required for other non-jurisdictional interstate service providers. Green Canyon requests that the Commission not require Green Canyon to re-justify its rate in three years, but apply a triennial informational filing requirement, similar to what the Commission now requires for Hinshaw pipelines, pursuant to a blanket certificate provided by section 284.224.<sup>3</sup> Such a blanket certificate allows the Hinshaw pipeline to perform interstate services, similar to that performed by intrastate pipelines under NGPA section 311, without losing their Hinshaw status.<sup>4</sup>

Green Canyon argues that application of an informational filing requirement such as is required for Hinshaw pipelines would not impose a section 4-type filing burden or refund obligation on Green Canyon. Green Canyon asserts that such a policy would allow the Commission and others to obtain the information necessary to enable an ongoing review of the rate charged by Green Canyon in a manner consistent with the review conducted for other similar service providers, without unnecessary disruption to Green Canyon's business activity. Green Canyon contends that the section 4-type filing obligation exposes Green Canyon to rate and business uncertainty. Green Canyon claims that, since there is no difference between when Green Canyon transports section 311 gas and a Hinshaw pipeline transports gas under section 284.224 of the Commission's regulations, there appears to be no basis for the Commission to impose differing, periodic filing requirements on intrastate pipelines as compared to Hinshaw pipelines.

## III. Discussion

Section 311(a)(2) of the NGPA authorizes intrastate pipelines to transport natural gas on behalf of interstate pipelines and local distribution companies served by interstate pipelines. Section 601 of the NGPA exempts transportation in interstate commerce authorized under section 311(a) from NGA jurisdiction. Without exemption under section 601, the intrastate pipeline would be a natural gas company subject to the

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<sup>3</sup>Citing Consumers Energy Co., 94 FERC ¶ 61,287 (2001) (Consumers).

<sup>4</sup>A Hinshaw pipeline is a pipeline exempted from the Commission's Natural Gas Act (NGA) jurisdiction by NGA section 1(C), which provides that, if all the gas the pipeline receives from out-of-state is consumed within the state and the pipeline is regulated by a state commission, it is not subject to NGA jurisdiction.

comprehensive regulatory requirements imposed by the Commission under its NGA sections 4, 5, and 7 jurisdiction.

Under section 284.123(b)(2)(i) of the Commission's regulations, an intrastate pipeline transporting gas under section 311(a)(2) may choose to use a rate determined by the Commission to be fair and equitable for its section 311 service. The intrastate pipeline must file the proposed rates and charges with the Commission, along with information showing the proposed rates and charges are fair and equitable. This is a form of lighter-handed regulation that allows intrastate pipelines to remain regulated by the states for most of their business and to only be regulated by the Commission only with respect to specific interstate services subject to section 311. Green Canyon filed to have the Commission determine a fair and equitable rate for its section 311 interstate service pursuant to these regulations. Green Canyon does not object to the Commission's approval of its rate petition. Green Canyon objects only to the requirement that it file a new rate petition in three years.

Green Canyon argues that, since it is providing essentially the same service as a Hinshaw pipeline that transports gas under section 284.224<sup>5</sup> of the Commission's regulations, a triennial rate filing requirement should not be imposed on it. It correctly points out that in Consumers the Commission determined that a Hinshaw pipeline company that transports gas under a section 284.224 certificate is not required to file an actual rate petition pursuant to NGA section 4. Rather, we required a Hinshaw pipeline to file, within 3 years, cost and throughput data sufficient to allow the Commission to determine whether any change to the pipeline's rate should be ordered pursuant to NGA section 5. Under section 5, the Commission would have the burden to support any rate change and such change would take effect prospectively from the date of the Commission's order.<sup>6</sup>

The Commission denies the request for rehearing. The Commission will continue to require Green Canyon, and other intrastate pipelines performing NGPA section 311 service pursuant to rates determined by the Commission under section 284.123(b)(2), to file every three years a new petition for rate approval pursuant to section 284.123(b)(2) to justify their existing rates or a changed rate for their section 311 services.<sup>7</sup> The filing will

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<sup>5</sup>18 C.F.R. § 284.224 (2001).

<sup>6</sup>Consumers at 62,029.

<sup>7</sup> See Michigan Consolidated Gas Company, 68 FERC ¶ 61,311 (1994) and Tejas (continued...)

not be solely an informational filing setting forth cost and throughput data like the triennial filing required of Hinshaw pipelines, but must include actual proposed rates. The difference in treatment as between intrastate pipelines and Hinshaw pipelines arises from the different statutory basis on which the Commission regulates the interstate activities of the two types of entities. The Natural Gas Act governs the Commission's regulation of the service performed by Hinshaw pipelines pursuant to their section 284.224 certificates. While NGA section 1(c) generally exempts Hinshaw pipelines from the Commission's NGA jurisdiction, that exemption does not apply to their interstate service under the section 284.224 certificates. Thus, any rate filing requirement imposed on Hinshaw pipelines in this context must be consistent with NGA sections 4 and 5. The United States Court of Appeals for the District of Columbia Circuit has held that the Commission cannot require pipelines to make rate filings under NGA section 4. Public Service Commission of New York v. FERC, 866 F.2d 487 (D.C. Cir. 1989). Consistent with that finding, the Commission in Consumers only imposed on the Hinshaw pipelines performing service under a section 284.224 certificate the triennial informational filing requirement described above. The Commission did not require the Hinshaw pipeline to file a new petition for rate approval pursuant to NGA section 4. To the extent that the cost and throughput data submitted by the Hinshaw pipeline shows that its rates are too high, the Commission would have to proceed under NGA section 5 to require a modification of those rates.

In contrast, the Natural Gas Policy Act governs the Commission's regulation of interstate service performed by intrastate pipelines under NGPA section 311. NGPA section 601(a)(2)(A) provides that neither the provisions of the NGA nor the Commission's jurisdiction under the NGA apply to transportation service performed pursuant to NGPA section 311. Thus, the provisions of NGA sections 4 and 5 do not apply to transportation by intrastate pipelines. Moreover, nothing in the NGPA requires the Commission to adopt procedures similar to those in the NGA for purposes of determining rates for NGPA section 311 transportation service. As the D.C. Circuit held in Associated Gas Distributors v. FERC, 824 F.2d 981, 1039 (D.C. Cir. 1987),

In § 311 Congress gave FERC broad authority to prescribe terms of transportation thereunder; it surely did not contemplate that FERC would use this authority to duplicate the regulatory scheme in place under the NGA . . . Congress underscored this distinction [between the NGA and the NGPA] in NGPA § 601(a)(2), providing that transportation in interstate commerce under § 311 shall not trigger the Commission's NGA jurisdiction.

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<sup>7</sup>(...continued)

Gas Pipeline Company, 66 FERC ¶ 61,253 (1994).

This seems an unequivocal expression of intent that NGPA regulation should not replicate the burdens of the NGA.

The Commission has consistently exercised its broad conditioning authority under NGPA section 311(c)<sup>8</sup> to require intrastate pipelines performing interstate section 311 service to file a new petition for rate approval every three years. In Arkansas Western Gas Co., 56 FERC ¶ 61,407 (1991) reh'g denied, 58 FERC ¶ 61,099 (1992), the Commission held that the limits on its ability to require pipelines to make rate filings under NGA section 4 do not apply to intrastate pipelines performing section 311 transportation service. Therefore, while we were constrained by the NGA to hold in Consumers that Hinshaw pipelines may make only an informational filing, the Commission is not subject to a similar constraint under the NGPA, and will continue to require intrastate pipelines with Commission approved rates under section 284.123(b)(2) to file an actual petition for rate approval every three years.

The Commission finds that this requirement is necessary for intrastate pipelines as part of the overall, more light-handed regulation the Commission affords intrastate pipelines performing section 311 transportation service. Because intrastate pipelines are regulated primarily by the states, they are relieved of the more stringent regulatory obligations imposed on interstate pipelines when they engage in interstate transportation services governed by section 311. For example, the Commission does not require such intrastate pipelines to comply with the detailed requirements concerning the data that interstate pipelines must file to support a request for a rate change under Part 154 of our regulations.<sup>9</sup> Nor does the Commission require such intrastate pipelines to file, annually, the comprehensive financial and technical reports, statements, and schedules required by Part 260 of the Commission's regulations. Accordingly, the requirement that these pipelines file triennial petitions for rate approval is necessary for the Commission to fulfill its duty to ensure that the rates charged by intrastate pipelines for interstate transportation service under section 311(a)(2) of the NGPA are fair and equitable. Rates for such interstate transportation services under section 284.123(a)(2) are not subject to

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<sup>8</sup>Section 311(c) provides, "[a]ny authorization granted under this section shall be under such terms and conditions as the Commission may prescribe."

<sup>9</sup>In Consumers, the Commission required a Hinshaw pipeline to include in its informational filing the full cost and throughput data specified in section 154.313 of the Commission's regulations. Thus, while a Hinshaw pipeline does not have to file an actual petition for rate approval, it must include more data in its informational filing than the Commission's regulations require in a petition for rate approval under section 284.123(b)(2).

review by a state regulatory agency. Requiring periodic rate filings with the Commission is the means by which the Commission can be assured section 311 rates remain fair and equitable for interstate transportation, or those rates are shown to have become unfair or inequitable, because the cost-of-service data upon which the rates are based have become stale the rates must be changed to fair and equitable levels.

The Commission orders:

Green Canyon's request for rehearing is denied as discussed in the body of this order.

By the Commission. Commissioner Brownell dissented with a  
separate statement attached.

( S E A L )

Linwood A. Watson, Jr.,  
Acting Secretary.

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BROWNELL, Commissioner, dissenting:

Today's order has convinced me that we have the authority to require intrastate pipelines performing interstate transportation under section 311 of the Natural Gas Policy Act (NGPA) to file triennial rate approval petitions rather than triennial informational filings. However, the order fails to convince me either that we must or that we should exercise that authority. First, as a legal matter, nothing in the NGPA requires the imposition of a triennial rate approval requirement. Second, as a policy matter, the order does not adequately articulate the public good that is served by imposing such a requirement, particularly given the business and rate uncertainty such an obligation engenders. The better and more equitable business model is to have one, consistent set of rules. The fundamental premise of the order is that it is necessary to regulate to the maximum extent allowable under the law--a philosophy that I do not endorse. My regulatory approach would be to regulate only to the extent necessary to protect the customer.

Last March in Consumers Energy Co., 94 FERC ¶ 61,287 (2001), the Commission changed its policy and no longer imposed a triennial rate filing on Hinshaw pipelines. I believe it is time to make a corresponding change in our treatment of intrastate pipelines regulated under NGPA section 311. There is no essential difference between Green Canyon's transportation of gas under NGPA section 311 and a Hinshaw pipeline's transportation of gas under section 284.224 of our regulations.

The majority argues that triennial rate justifications are necessary to ensure that rates charged by intrastate pipelines for interstate service under NGPA section 311 are fair and equitable. However, as noted above, the Commission has determined that customers of Hinshaw pipelines are adequately protected through informational filings, combined with our authority to correct unjust and unreasonable rates under section 5 of the Natural Gas Act (NGA), just as customers of interstate pipelines are protected. Green Canyon's customers can be equally protected through informational filings and the Commission's broad authority under NGPA section 311.

Finally, I disagree with the argument that imposing a triennial rate approval requirement on Green Canyon is consistent with what the majority describes as "light-handed regulation" under NGPA section 311. What is light handed about imposing a triennial rate approval requirement that cannot even be imposed on interstate pipelines? In a footnote, the majority implies that triennial information filings are more onerous than rate approval petitions, because the Commission's regulations list more data for inclusion in an informational filing than in a rate approval petition. Clearly, Green Canyon does not agree with that assessment, perhaps because of features of a rate approval petition other than the number of required data categories, including bearing the burden of establishing the fairness of a rate, and the potential existence of a refund cloud pending Commission review of each triennial filing. Therefore, as a matter of efficiency, equity, and consistency with the intent of NGPA, I would grant Green Canyon's rehearing request.

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Nora Mead Brownell  
Commissioner